



## Wichita Police Department Policy Manual

Approved by: \_\_\_\_\_

### Policy 303 – DUI Arrests

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Maintained by: Special  
Operations

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#### STOPPING DUI VEHICLES:

- 303.01 Service Officers shall not stop or attempt to stop DUI suspects. He/she shall immediately notify the dispatcher and continue following and/or observing the suspect until a commissioned officer arrives. The commissioned officer shall then stop the suspect and conduct an investigation. In the event the suspect is arrested, the Service Officer shall be listed as a witness and submit a supplemental report.
- 303.02 When a non-commissioned officer arrives at an accident scene involving a person suspected of DUI, he/she shall immediately ask the 911 dispatcher to send a commissioned officer to their location to conduct a DUI investigation.
- 303.03 The officer shall have reasonable suspicion prior to stopping the suspect's vehicle [i.e., one or more traffic violations, or the person's driving pattern, coupled with the officers training and experience is indicative of driver impairment- State v. Field, 252 Kan. 657 (1993)], or shall have observed the suspect attempting to operate a vehicle under the apparent influence of alcohol or drugs. Upon initial contact with the suspect, the officer shall note any evidence about him/her that is indicative of a DUI violation. Once the officer has determined that reasonable suspicion exists to believe the suspect is under the influence of alcohol or drugs, the field sobriety test found in Section 303.04 shall be given.

#### FIELD SOBRIETY TEST:

- 303.04 A commissioned officer should request the driver to submit to three (3) standardized field sobriety tests (S.F.S.T.), administered in the following order:

1. Horizontal Gaze Nystagmus;
2. Walk and Turn;
3. One-leg Stand.

- 303.05 The appropriate scoring process for the three (3) S.F.S.T.'s listed in Section 303.04 shall be used to determine additional probable cause to believe that the suspect is DUI. The scores for each evaluation will be documented in an officer's dictated report and on the Alcohol Influence Report.

#### ADVISING DUI SUSPECT OF ARREST:

- 303.06 When field sobriety tests indicate that the suspect is DUI, the officer shall advise the suspect that they are under arrest for DUI alcohol and/or drugs, and any other related charges.

#### IMPLIED CONSENT (DC-70) AND STATE FORM DC-27 PROCEDURES

- 303.07 Officers shall provide a copy of the Implied Consent Advisory [State Form DC-70] to the suspect. Officers shall then read all applicable portions of the "Implied Consent Advisory" and record the suspect's responses to the question on the reverse side. The Implied Consent Advisory must be given in the English Language only (State v. Bishop and Kim v. Kansas Department of Revenue)

If the driver refuses the test or the test results show an alcohol concentration of .08 or greater, any drivers license in his/her possession shall be confiscated and the Law Enforcement Officers Certification portion of the state form DC-27 shall be completed. The pink copy is to be physically handed to and taken by the suspect. A recent court decision states that just touching the suspect with pink copy of the DC-27 is insufficient. If the suspect fails to take the DC-27 into his possession, place the copy into their personal property and note the fact in your report. It is mandatory that the officer initials those statements being certified and sign the form at the bottom.

1. For drivers under 21 years of age with a BAC of .02 or greater, but less than .08, a DC-28 shall be completed. If the driver under 21 years of age fails or refuses a tests, then the form DC-27 is filled out instead of the DC-28.
2. For drivers who possess a commercial drivers license and are operating a commercial vehicle who have a BAC of .04 or greater, but less than .08, officers will complete a CDL-5 form. If the driver who possesses a commercial driver's license is operating a commercial vehicle, and has a BAC of .08 or greater, both the CDL-5 and DC-27 forms will be filled out.

#### MIRANDA WARNING/ALCOHOLIC INFLUENCE REPORT:

- 303.08 The officer will read the suspect the Miranda Warning after taking the Breath, Blood, or Urine Test, or after a refusal of a test(s) and after the Implied Consent Advisory, but prior to filling out the question portion of the Alcohol Influence Report (WPD form 321-205).
- 303.09 R The "Temporary Driver's License" section of the DC-27 contains a place for the officer to note whether the document is, or is not, a valid temporary driver's license. If the suspect does not have a valid driver's license at the time of the refusal or test failure, the DC-27 will not serve as a temporary DL. The officer must check the appropriate box to indicate the reason for such invalidity. All confiscated driver's licenses, along with the white copy of the DC-27, must be sent to the State within seven (7) days of the arrest/refusal.

CHEMICAL TESTS:

- 303.10 The standard test given for DUI/Alcohol is the breath test, however, if unusual circumstances exist the preferred chemical test for alcohol is the blood test. If an officer suspects DUI/Drugs, the preferred tests will be blood, or both blood and urine, but not breath. Blood or urine may be collected within the guidelines set forth in this procedure, and with the prior approval of a field supervisor.
- 303.11 If the suspect agrees to take a breath test, the dispatcher will be notified and a B.A.T. van will be sent to the officer's location. If the B.A.T. van is not available, an adult suspect shall be transported to the Adult Detention Facility, whereas a juvenile shall be transported to the Juvenile Intake Assessment Center. The officer shall ask the dispatcher to have a certified Intoxilyzer operator contact him/her. While waiting for the B.A.T. van or while transporting the suspect to the booking facility, the officer shall keep him/her under constant observation, to prevent any further consumption of alcohol, and to ensure that nothing else is ingested or placed into the mouth [e.g., candy, gum, tobacco products or any fluids], prior to the breath test. Should the suspect vomit during the twenty-minute deprivation period, the officer shall begin a new twenty-minute deprivation period prior to the breath test being conducted. Transportation time to an intoxilyzer should not be included as part of the twenty (20) minute deprivation.
- 303.12 In conducting a breath test, members of the Department shall strictly adhere to the following procedures:
- A. Only certified operators shall be used to operate the Intoxilyzer.
  - B. Results of the Intoxilyzer test shall be recorded in both the Intoxilyzer Log and on the Alcohol Influence Report.
- 303.13 Intoxilyzer printouts will be handled in the following manner:
- A. A copy of the breath test results shall always be given to the suspect.
  - B. The additional copies of the printouts of the intoxilyzer will be turned in with the mail and routed to the Accident Follow-Up Section.
- 303.14 The failure of a suspect to provide an adequate breath sample, or any other directed test sample [a suspect can be required to take more than one (1) test, and a refusal of any is considered to be a total refusal], shall constitute a refusal.

ADDITIONAL TEST PROCEDURE [AT SUSPECT'S REQUEST]:

- 303.15 When a suspect submits to and completes a test or tests and requests that a different test be conducted, the suspect shall be immediately transported to the medical facility of his/her choice for the second test to be administered at his/her own expense. Officers transporting a suspect for the purpose of an independent test are responsible for the following:
- A. Upon arrival at the medical facility, security personnel shall be advised of the nature of the arrest/incident.
  - B. The officer transporting the suspect shall remain with him/her at all times, to ensure that no further alcohol or drug consumption occurs, and that nothing else is ingested.
  - C. The officer shall request that no ethanol-based substances be used in conducting the test.
  - D. The officer shall note the name of the person administering the test, the time that it was given, and the officer shall place this information in their report.
  - E. Under no circumstances shall an officer submit any specimen resulting from an independent test to the Department's laboratory for analysis.

BLOOD SAMPLE PROCEDURE:

- 303.16 In the event the officer requests that a blood sample be drawn to determine its alcohol or drug content, and the sample is to be used as evidence; the following procedures shall be adhered to:
- R
- A. If the suspect is injured, but conscious, the suspect shall be transported by EMS to the hospital. If the suspect is neither injured nor unconscious, the suspect shall be transported to St. Francis Hospital by police vehicle. Upon arrival, the officer shall:
    - 1. Complete a DC-27 [as described in Section 303.07] except for line numbers 4 and 8; officers should complete a citation or citations, UCCs, and a 4 page affidavit and send all documents to AFU for assignment to a follow-up detective.
    - 2. If the suspect agrees to take the test, request that a blood sample be drawn to determine alcohol or drug content.
  - B. In the event the suspect is unconscious, it is not necessary to obtain his/her permission prior to having blood drawn and tested for its alcohol/drug content; the officer shall have him/her taken by EMS to a hospital and shall there cause a blood sample to be taken. Implied consent still needs to be read and a copy provided to the suspect.

- C. Hospital security personnel shall be advised of the nature of the arrest/ incident.
- D. A commissioned officer or Service Officer shall remain with the suspect at all times to ensure that no further consumption of alcohol/ drugs occurs.
- E. Per K.S.A. 8-1001(C)(3), blood samples shall be drawn by a licensed physician, nurse, qualified medical technician or phlebotomist. The officer shall request that no ethanol-based substances be used in drawing the blood sample. All sample vials shall be at least 3/4 full, and shall be placed in the physical evidence refrigerator in the WPD Lab. During a consent blood draw, if the suspect is believed to be under the influence of only alcohol, then only one tube is required to be drawn. If the suspect is believed to be under the influence of alcohol and/or drugs then two tubes will be required to be drawn.
- F. The name of the person drawing the blood shall be noted in the additional name portion of the Incident Report. The member of the Department who obtains the name(s) of hospital personnel shall contact the Case Desk prior to the end of his/her tour of duty to ensure the name(s) are entered into the WPD computer as witnesses.
- G. In all cases where a blood sample has been taken, the member of the Department who was present shall note in his/her report all circumstances surrounding the drawing of the blood.
- H. The blood draw toxicology report results are received at Property and Evidence after it is processed by the Wichita-Sedgwick County Regional Science Center. The correct State of Kansas form (DC-27, DC-28, OR CDL-5) will be completed depending on the alcohol concentration in the blood test, the age of the driver, and whether a commercial vehicle is or is not involved. The officer will be notified by a supervisor that he/she will have five (5) days to respond to the follow-up detective in AFU and complete a DC-27 / DC-28 / CDL-5 and any other paperwork pertaining to the case if not done as previously state in 303.16 A1. It is imperative for the officer upon receiving a notice regarding the blood draw results, to get in or attend to this as soon as possible to complete the paperwork.
- I. Notification will be sent to the departmental member through a supervisor. Failure to respond within five (5) days of notification will result in a 2<sup>nd</sup> notification to the appropriate supervisor and possible disciplinary action.

303.17 URINE SAMPLE PROCEDURES:

Collection of a urine sample shall be supervised by a person of the same sex as the person being tested and shall be conducted out of the view of any person other than the Department member supervising the collection. If at all possible, the specimen cup should be 3/4 full after collection. Officers shall follow evidence handling procedures [Policy 708.09]. Specimen cups and rubber gloves will be available at the Adult Detention Facility.

303.18 MANDATORY BLOOD DRAWS:

- R If a driver has been involved in a traffic collision where there is serious injury or death and the driver could be cited for any traffic offense, then a mandatory blood draw will be done to determine if the driver is operating a vehicle under the influence of alcohol or drugs. All blood draw procedures in 303.16 will be followed. However, if the driver refuses to submit to testing after being advised of the request and reading the DC 27, the driver will be informed of the mandatory requirement under the circumstances of the case and the blood draw will be performed. If the driver is not suspected of being under the influence of alcohol or drugs then only one (1) tube is required to be taken. If the driver is suspected of operating a vehicle under the influence of alcohol or drugs then three (3) tubes will be taken. Serious injury is defined as:

- A. Disabling a person from the physical capacity to remove themselves from the scene.
- B. Renders a person unconscious for any amount of time.
- C. Immediate loss of or absence of the normal use of at least one limb.
- D. Injury determined by a physician to require surgery.
- E. Any injury that would indicate the person may die or be permanently disabled by the injury.

303.19 CHARGING SUSPECT WITH DUI/ALCOHOL :

A suspect shall be charged under both ordinances 11.38.150(a)(1) and 11.38.150(a)(2) when subsection A [below] applies. This will allow prosecutors to select one, the other or both for submittal to the judge/jury. When subsection B or C [below] apply, the suspect shall be charged only with violation of 11.38.150(a)(2) for the DUI; other related traffic charges shall be noted on the citation and on the Arrest Report.

- A. Breath, blood, or any other test results meet or exceed the limits established by State statute, and the officer's observations indicate that the vehicle operator's driving or attempt to drive was impaired.
- B. Breath, blood, or any other test results do not meet or exceed the limits established by state statutes, but the observations made by the officer indicate the vehicle operator's driving or attempt to drive was impaired, and no evidence indicates that the impairment was the result of the use of drugs.
- C. Breath, blood, any other test or all tests are refused, but the officer's observations indicate the vehicle operator's driving or attempt to drive was impaired, and no evidence indicates that the impairment was the result of the use of drugs.

303.20 CHARGING SUSPECT WITH DUI/DRUGS:

The suspect shall be charged with ordinance 11.38.150 (a)(4) DUI/Drugs if any of the criteria listed below apply:

- A. A blood or urine test is conclusive that the cause of the vehicle operator's impairment was the use of drugs
- B. The officer's observations indicate the vehicle operator's driving or attempt to drive was impaired, even if breath, blood, or urine tests are inconclusive or refused and evidence exists of drugs.
- C. Drug Recognition Experts (DRE's), upon request of an arresting officer(s), may be summoned to evaluate a suspect who is under arrest for a violation of K.S.A. 8-1567(A)(4), (5), or K.S.A. 8-2,144, for operating a motor vehicle or commercial motor vehicle while under the influence of drugs, or combination of alcohol and drugs.
  - 1. The suspect shall be under custodial arrest.
  - 2. The arresting officer(s) must have exhausted all physical (SFST's) and evidential (Breath, Blood Testing) to the extent possible and have concluded through his/her testing that the suspect's impairment from alcohol is non-existent or well below the established statutory limit before summoning the DRE.
  - 3. The suspect must not have invoked his/ her Miranda rights.

NOTE: the drugs do not have to be illegal; a suspect can be charged with DUI when on legally prescribed drugs.

303.21 RESPONSIBILITIES OF THE INVESTIGATING COMMISSIONED OFFICER:

R The investigating commissioned officer shall be responsible for the following:

- A. Conducting a driver's license and an Interstate Identification Index (triple) check through SPIDER in order to determine if he/she has any prior convictions for DUI in the previous ten (10) years from the date of arrest. If he/she has at least one prior conviction in the last ten (10) years, an additional look back will be conducted back to July 1, 2001. If he/she has only one prior conviction in the previous ten (10) years, he/she will be booked for a misdemeanor charge of DUI after a previous conviction. If the look back determines he/she has at least one prior conviction in the previous ten (10) years and additional convictions after July 1, 2001, the suspect shall be booked "Felony DUI-Hold for State Warrant. The officer shall obtain from SPIDER the suspect's driver's license printout, and attach it to the Arrest Report and notify SPIDER to forward the triple I to the Accident Follow-up Unit. In addition, the officer shall fill out the affidavit section of the Arrest Report. In the event SPIDER is unable to check the driver's license and/or the triple I to determine if the arrestee has prior DUI convictions in the look back time frame, the suspect shall be booked for misdemeanor DUI. The officer shall note in their report that a driver's license check was unable to be conducted, and reason the why.
- B. Completing the citation, Incident Report "additional name" section(s), the affidavit section of the Arrest Report, the Alcoholic Influence Report, implied consent advisory, and the State Form DC-27. NOTE: Only if the suspect refuses to submit to the breath test, or the Intoxilyzer reading is .08 or greater, does the commissioned officer complete the "Temporary Driver's License" section of this form.
- C. If the suspect's vehicle is to be impounded, request and wait for a tow truck, conduct an inventory search, see Policy 404-Impounds, and notify the Service Officer of the names of the towing company, the tow-truck driver, and the driver's identification number.
- D. Obtaining the Incident Number, any connecting Incident Number, and submitting a taped report on the incident.
- E. Completing all items found in Section 303.21 if no B.A.T. van is available.

303.22 RESPONSIBILITIES OF SERVICE OFFICERS:

Service Officers shall be responsible for:

- A. Completing an Incident Report, including the vehicle information section for an impound, and an Arrest Report, the Service Officer will enter the incident data into the computer system through case desk or put copies of the report in the Cases To Be Entered (CTBE) folder and have a notation made in the synopsis indicating whether or not an Interstate Identification Index (triple I) was obtained. The Incident Number and any connection Incident Numbers will be placed on all forms.
- B. Transporting the suspect to the Adult Detention Facility, Juvenile Intake and Assessment Center or Juvenile Detention Facility and completing the booking process [see Section 302.26]; and
- C. Properly submitting all evidence [including filling out the necessary receipts] pertaining to the case, with the exception of evidence, which would normally be submitted by the arresting officer.

303.23 DUI PROCEDURES FOR HEARING-IMPAIRED/NON-ENGLISH SPEAKING DUI SUSPECTS:

Should a suspect indicate an inability to communicate with an officer the following procedures shall be adhered to:

- A. If the officer reasonably believes that the suspect can understand enough English or can communicate by other means where directions to them can be understood then the Miranda Warning and the directions for the field sobriety evaluations can be given, the officer may proceed with the DUI Arrest Procedure.
- B. Should the officer determine that the suspect is unable to understand sufficient English or is hearing impaired to the degree that the Miranda Warning, and the directions of the field sobriety evaluations cannot be understood, the officer should obtain an interpreter, in accordance with Policy 703 – Deaf and Hard of Hearing Persons, prior to continuing the DUI Arrest Procedure.
- C. In the event the suspect speaks a language other than English and an interpreter is obtained, the officer shall instruct the interpreter to translate the Miranda Warning and directions to the field sobriety evaluations as nearly verbatim as possible, as provided by the officer.
- D. If the officer has probable cause to believe that the suspect is DUI and no interpreter is available, the officer may arrest [with prior approval of a field supervisor] the suspect without conducting the field sobriety evaluations or any other test. It is recommended that, when making an arrest of this nature, the suspect be videotaped either on In Car video or BAT van video.

303.24 USE OF AUDIO/VIDEO EQUIPMENT IN DUI CASES:

R Audio/video equipment should be used to preserve the driver's appearance and physical condition:

- A. In near fatalities;
- B. In fatal accidents with DUI suspected;
- C. While the suspect is in a B.A.T. Van;
- D. At the officers or a supervisor's discretion.
- E. Videos should be noted on the back of both the Kansas Standard Offense Report (KSOR) and the Alcohol Influence Report.

303.25 PROCEDURE FOR CONDUCTING VIDEOTAPED FIELD SOBRIETY EVALUATIONS:

R Videotaped field sobriety evaluations should be conducted by the arresting officer. They shall be taped in their entirety, and the evaluations shall be conducted in the same manner and order as described in Section 303.04. Should the suspect not be able to understand the directions of a field sobriety evaluation, due to a language barrier or hearing-impairment, the officer should videotape the general appearance and condition of the suspect

303.26 FELONY DUI RE-FILES

R A Felony DUI RE-FILE is defined as a Felony DUI (Hold for State Warrant) in which the Office of the District Attorney declines to prosecute. Upon being notified by either a written Officer's Report or by e-mail, the officer has five (5) days to contact the AFU office to make arrangements to issue citations for traffic charges and Uniform Criminal Complaint (UCC) for criminal charges when applicable.

303.27 REQUIRED PAPERWORK FOR DUIS

The following paperwork is required for processing DUI cases:

- A. Routine DUI Arrest:
  - 1. Incident Report (IR),
  - 2. Alcohol Influence Report (AIR),
  - 3. Arrest Report (AR),
  - 4. Law Enforcement Officer Certification form (DC-27 or DC-28 or CDL-5),
  - 5. Implied Consent Advisory (DC-70),
  - 6. Intoxilyzer Printout Card(s)
  - 7. Taped narrative from all officers who had contact with suspect. If DUI was a result of a speeding violation be sure to include Radar and Tuning Fork Numbers in the narrative.
  - 8. Copy of Inmate Property Receipt showing copy of DC-27 and DC-70
  - 9. Witness statement (if applicable)
  - 10. If DUI suspect has no DL or any Photo ID, be sure that the print card and booking photo is done at the time of booking for later positive courtroom identification purposes.
- B. Blood Draws: Blood Draw Kits are made up in advance and includes all the necessary paperwork needed. The kit contains:
  - 1. Incident Report,
  - 2. Alcohol Influence Report,
  - 3. Blood Draw Form,
  - 4. Law Enforcement Officer Certification form (DC-27/DC-28/CDL-5),
  - 5. Implied Consent Advisory DC-70,
  - 6. Gray top blood vial in plastic bag,
  - 7. Evidence forms & envelope,

8. Forensic Science Center lab request & custody forms.

Charges should be pending the results of the blood draw with a DC-27 [as described in Section 303.07] except for line numbers 4 and 8; officers should complete a citation or citations, UCCs, and a 4 page affidavit and send all documents to AFU for assignment to a follow-up detective.

- C. Blood Draw kits may be used for Urine Analysis (UA) collection in addition to using the standard UA specimen cup. The forms needed are in 303.27 b.
- D. DUI Refusal:
  1. Incident Report,
  2. Alcohol Influence Report,
  3. Law Enforcement Officer Certification form (DC-27, DC-28, or CDL-5),
  4. Implied Consent Advisory DC-70,
  5. Arrest Report (if booked).

No Arrest Report is needed if suspect is admitted to Hospital. For a DUI Refusal, misdemeanor DUI and other charges can be issued on citations or on a Uniform Criminal Complaint (UCC) if applicable and the DC-27 should be issued at the same time. If the suspect is in critical condition or a III check reveals a possible felony DUI charge, then the charges should be pending and not issued.